

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANDREW MASSARELLI & MICHELLE	:	
MASSARELLI,	:	
	:	
Plaintiffs,	:	
	:	Civil Action No. 05-266-KAJ
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

ANSWER TO COMPLAINT

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.

2. Admitted.

3. Denied, except that Defendant admits that Plaintiff Andrew Massarelli submitted a written claim for an alleged personal injury to the United States Department of Transportation, which claim was denied by letter dated November 15, 2004, and that Plaintiff Andrew Massarelli filed suit within six months thereafter, thereby complying with the jurisdictional prerequisites set forth in 28 U.S.C. § 2401(b) for filing a tort claim against the United States. Defendant denies that Plaintiff Michelle Massarelli complied with the jurisdictional prerequisites set forth in 28 U.S.C. § 2401(b) for filing a tort claim against the United States.

4. Admitted.

5. Denied, except that Defendant admits that in the City of Dover on or about September 5, 2001, at approximately 10:25 a.m., a vehicle driven by Jeffrey McCarthy on Fairview Avenue turned right and collided with a vehicle driven by Phillip Nguyen.

6. Denied, except that Defendant admits that in the City of Dover on or about September 5, 2001, at approximately 10:25 a.m., a vehicle driven by Jeffrey McCarthy on Fairview Avenue turned right and collided with a vehicle driven by Phillip Nguyen.

COUNT I

CLAIM AGAINST DEFENDANT UNITED STATES OF AMERICA

7. The answers to paragraphs 1 through 6 are incorporated herein by reference.

8. Defendant denies each and every allegation of paragraph 8, including each and every allegation in subparagraphs a through g, except that Defendant admits that Phillip Nguyen was employed by the United States and acting within the course and scope of his employment at all times relevant to this matter.

COUNT III

CLAIM OF PLAINTIFF ANDREW MASARELLI

9. The answers to paragraphs 1 through 8 are incorporated herein by reference.

10. Denied.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Denied that Defendant was negligent. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 13.

14. Defendant is without knowledge or information sufficient to form a belief as to

the truth of the allegations in paragraph 14.

COUNT V

CLAIM OF PLAINTIFF MICHELLE MASARELLI

15. The answers to paragraphs 1 through 14 are incorporated herein by reference.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

* * *

Additionally, each allegation in Plaintiffs' Complaint not specifically admitted is denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Count V, "Claim of Michelle Massarelli," should be dismissed for lack of subject matter jurisdiction because Plaintiffs did not present this claim in writing to the appropriate Federal agency as required by 28 U.S.C. §§ 2401(b) & 2679(d)(5)(B).

2. Plaintiffs failed to join indispensable parties.

3. Plaintiffs' demand for a jury trial should be stricken pursuant to 28 U.S.C. § 2402.

4. Plaintiffs' action is barred by the doctrine of comparative negligence.

WHEREFORE, Defendant prays that this Honorable Court enter an order:

A. Dismissing Plaintiffs' action with prejudice;

B. Dismissing Plaintiff Michelle Massarelli's claims with prejudice;

C. Striking Plaintiffs' demand for a jury trial; and

D. Ordering such further and other relief the Court deems fair and just.

DATED: October 7, 2005

Respectfully Submitted,

Colm F. Connolly
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on **October 7, 2005**, I electronically filed a **ANSWER TO COMPLAINT** with the Clerk of Court using CM/ECF which will send electronic notification of such filing to the following:

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